

Interpretation of T.C.A. § 3-6-305(3)
with respect to gifts given by a lobbyist or an employer
of a lobbyist to a candidate for public office, an official
in the legislative or executive branch, or immediate
family of such candidate or official for a non-business
purpose and motivated by a close personal friendship.

INTRODUCTION:

Pursuant to the T.C.A. § 3-6-305(a)(1), with limited exceptions, “No employer of a lobbyist or a lobbyist may provide a gift, directly or indirectly, to a candidate for public office, official in the legislative branch, official in the executive branch, or immediate family of such candidate or official.” T.C.A. § 3-6-305(a)(2) reciprocally provides, “A candidate for public office, an official in the legislative branch, or an official in the executive branch, or the immediate family or such candidate or official may not solicit or accept directly or indirectly a gift from an employer of a lobbyist or a lobbyist.”

“Gift” is defined as “any payment, honorarium, subscription, loan, advance, forbearance, rendering or deposit of money or services, unless consideration of equal or greater value is received.” See T.C.A. § 3-6-301(11). Violations of the gift prohibitions may result in civil penalties of up to ten thousand dollars (\$10,000). See T.C.A. § 3-6-306.

“Candidate for public office” means any individual who has made a formal announcement of candidacy or qualified under the law of this state to seek nomination for election or elections to any state public office, or has received contributions or made expenditures except for incidental expenditures to determine if one shall be a candidate, or has given consent for a campaign committee to receive contributions or make expenditures with a view to bringing about such person’s nomination for election or the election to state public office, and any individual who has been nominated for appointment as an official in the legislative or executive branch. See T.C.A. § 3-6-301(6).

“Official in the executive branch” means the governor, any member of the governor’s staff, any member or employee of a state regulatory commission, including, without limitation, directors of the Tennessee Regulatory Authority, or any member or employee of any executive department or agency or other state body in the executive branch. See T.C.A. § 3-6-301(19).

“Official in the legislative branch” means any member, member-elect, any staff person or employee of the general assembly or any member of a commission established by and responsible to the general assembly or either house thereof who takes legislative

action. "Official in the legislative branch" also includes the secretary of state, treasurer, and comptroller of the treasury and any employee of such offices. See T.C.A. § 3-6-301(20).

"Immediate family" means a spouse or minor child living in the household. See T.C.A. § 3-6-301(12).

T.C.A. § 3-6-305(b) contains various exceptions to the general gift prohibition. Specifically, T.C.A. § 3-6-305(b)(3) provides an exception for "gifts that are given for a non-business purpose and motivated by a close personal friendship, but only to the extent such gifts are specifically defined and authorized by the rules of the ethics commission (Emphasis added)."

~~The Commission is aware that between lobbyists and employers of lobbyists, candidates to public office, legislative and executive branch officials, and the immediate family of such candidates and officials, close personal friendships have developed. Concern has been expressed to the Commission that certain gift giving, which is motivated by such friendships, may be in potential violation of the Ethics Law.~~

The Commission has been asked ~~t~~To provide guidance to lobbyists and employers of lobbyists, candidates for public office, legislative and executive branch officials, and the immediate family of such candidates and officials, regarding the circumstances under which gifts will be considered acceptable pursuant to T.C.A. § 3-6-305(b)(3)~~the Commission is issuing this advisory opinion.~~

DISCUSSION:

The statute provides an exception for those gifts from lobbyists or employers of lobbyists ("employers") to candidates for public office, legislative or executive branch officials (and immediate family of such candidates and officials), which are: (1) given for a non-business purpose and (2) motivated by a close personal friendship. In assessing whether a gift from a lobbyist or an employer of a lobbyist to a candidate ~~for public office, legislative or executive branch~~ official, or their immediate family meets these two criteria, the Commission will take the following factors into consideration:

1. Whether the lobbyist or employer of a lobbyist is paying for or providing the gift out of his or her own personal funds or ~~is whether:~~
 - a. the gift is instead being charged to the lobbying firm or to the employer ~~of the lobbyist, or~~
 - b. reimbursement will be sought from the lobbying firm or the employer;
 - c. the cost of the gift is ~~of a lobbyist~~ or will be taken as business deduction by the lobbyist or employer.

A gift that ~~If it~~ is expensed or reimbursed to the lobbying firm or the employer of the lobbyist, or for which a business deduction has been taken, will be ~~there is a presumed position that the~~ to be a gift ~~was~~ provided for a business purpose.

2. Whether there has been a ~~pattern~~ history of gift giving between the lobbyist or ~~the employer of a lobbyist~~ and the candidate, ~~for public office, legislative or executive branch~~ official, or their immediate family, ~~in the past~~ as well as ~~and~~ the nature of ~~the~~ such gift giving. The longer the practice, the more likely the gift giving is for a non-business purpose and a result of a close personal friendship. In addition, if the gift giving began prior to the candidate or official obtaining their status as a candidate or official, and the pattern of giving remained consistent after the individual obtained their candidate or official status, then it is more probable that the gift will be interpreted as a result of a close personal friendship rather than a business gift.
3. Whether the candidate, legislative or executive branch official or immediate family member has reciprocated with a gift to the lobbyist or the employer of the lobbyist in the past, as well as whether such ~~and was~~ ~~reciprocation~~ gift was ~~provided~~ of a similar value. Again, the presence of reciprocative gift ~~on~~ of an equal value would indicate the existence of a non-business purpose and a close personal friendship.
4. Whether the timing and circumstances of the gift is appropriate. When ~~If a lobbyist or an employer of a lobbyist has a matter soon or currently pending before or will shortly be before~~ a legislative or executive branch official, a gift to such official is more likely to be construed as a gift ~~would indicate the greater possibility that it was~~ for a business purpose.
5. Whether the lobbyist or the employer of the lobbyist at the same time gave the same or similar items to other candidates to public office, legislative or executive branch officials, or the immediate family of such candidates or officials. If similar gifts are provided to other officials, it tends to negate that the gift was provided based on a close personal friendship and supports that it was for a business purpose.

I'm a bit confused by this paragraph. Are you trying to address a situation such as – I am a lobbyist and I give a gold watch to each member of the Shelby county delegation, and I try to claim that I am simply personal friends with all of them?

As in all gift situations, a candidate for public office, a legislative or executive official or a member of their immediate family, to overcome any uncertainty as to the

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legality or the appropriateness of the gift from a lobbyist or an employer of a lobbyist, has the option of paying the lobbyist or employer of the lobbyist the fair market value of the gift or, in the case of certain gifts, paying for the gift directly.

CONCLUSION: *Since we are not answering a specific fact scenario on this one, do you think we should give examples under each one of the scenarios?*

Tom Garland,

Chair

R. Larry Brown

Linda W. Knight

Donald J. Hall

Dianne F. Neal

Benjamin S. Purser, Jr.,

Commissioners

Date: August 21, 2007